

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Pepco Holdings, Inc.

Docket Nos. ER08-686-000
ER08-686-001

(Issued August 27, 2008)

Attached are the separate statements by Commissioners' Kelly and Wellinghoff dissenting to an order issued on August 22, 2008, in the above-referenced proceeding. *Pepco Holdings, Inc.*, 124 FERC ¶ 61,176 (2008).

Kimberly D. Bose,
Secretary.

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Before Commissioners:

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KELLY, Commissioner, *dissenting*:

This order addresses a request for incentive rate treatment filed by Pepco Holdings, Inc., (PHI) on behalf of three of its transmission-owning public utility affiliates.¹ PHI requests authorization to implement a 150 basis-point return on equity (ROE) incentive adder for PHI Companies' eight transmission enhancement projects that are identified by the PJM Regional Transmission Expansion Plan (RTEP). In this order, the majority elects to grant the full ROE adder request to each of the eight projects listed in the application. For the reasons articulated below, I fundamentally disagree with the majority's decision to do so with respect to PHI's eight projects.

In order to determine whether PHI's application warrants incentive rate treatment, I applied the project-based criteria that I have relied upon in previous transmission incentives proceedings² and conclude that, in each of the eight projects, the PHI Companies are undertaking no more than routine investments in transmission facilities. Among other things, I do not believe that the PHI Companies' investment here merits incentive rate treatment when considering that it will be spread over eight projects, invested over the period between 2008 and 2012 and represents less than one-third of PHI's existing transmission rate base. This finding is only reinforced by examining each project individually. For example, the Oak Hall project is estimated to cost \$8 million and is due to be in service next year. Based on the application, I believe that this is indeed a routine project and strain to comprehend the decision to award it an ROE adder of 150

¹ Potomac Electric Power Company, Delmarva Power & Light Company, and Atlantic City Electric Company.

² See *American Electric Power Service Corporation*, 118 FERC ¶ 61,041 (2007).

basis points. Second, there is nothing in the application to indicate that interaction with jurisdictions and regulatory authorities will be outside of PHI's normal orbit or will create unforeseen challenges in completing the project. Third, while these projects will yield benefits to ratepayers, I do not see evidence of broad public interest benefits and therefore nothing to indicate that normal rate recovery mechanisms are insufficient to ensure these projects are completed.

Furthermore, I do not support granting incentive rate treatment, much less an ROE adder of 150 basis points, to any project that the applicant would otherwise be required to build. PHI makes very clear multiple times in its application that this is indeed the case, stating that “[a]ll of the projects are required to eliminate reliability violations identified by PJM.”³ I fail to see how the PHI Companies are not obligated to undertake these projects, given that failure to do so would jeopardize reliable service to their own customers. I believe that the majority's decision to bestow ROE adders for all of the projects runs contrary to Order No. 679-A, which states that “the most compelling case for incentive ROEs are new projects that present special risks or challenges, not routine investments made in the ordinary course.”⁴

More generally, it appears that the majority has combined these eight projects and treats them as a single transmission project, perhaps in an effort to bolster its findings. The majority makes little or no attempt to distinguish between projects, ascribing benefits, challenges and risks of one or some, such as they are, across the full range of the application. For example, the order states that each set of projects involves “substantial coordination with other utilities.” However, a closer inspection of the application reveals that PHI does not discuss substantial coordination, even if it presented a special challenge, with respect to all of the projects. The order also discusses a “range of construction risks and challenges,” indentifying narrow rights-of-way and river crossings, wetlands and endangered species. It is apparent from the application that not all projects in the application face these purported risks and challenges. This bleeding of attributes across projects introduces further ambiguity as to the type of transmission projects that merit incentive rate treatment.

The majority's decision here is hardly surprising, given an earlier decision to award incentive rate treatment to two Baltimore Gas & Electric Co. baseline

³ Exhibit PHI-6 at 8.

⁴ *Promoting Transmission Investment through Pricing Reform*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236, at P 60 (2006), *order on reh'g*, 119 FERC ¶ 61,062 (2007).

projects.⁵ I dissented from *BG&E*, arguing that the projects therein were routine investments and that granting incentives there made denying future incentives requests more difficult. As could be expected, PHI supports its request here via comparison to *BG&E* and the incentives granted therein. The majority is in no position to deny PHI's request here.⁶ Consequently, I suspect that this orders will join *BG&E*, and perhaps others, as those brandished by applicants seeking incentives for projects that are merely included in PJM's or some other RTO's transmission expansion plan. Granting incentives requests for routine projects such as these further solidifies incentive rate making as the new, normal rate recovery methodology for transmission investment. As I have noted elsewhere, I do not believe that this is what Congress intended when it authorized the Commission to provide incentive rate making in appropriate circumstances.⁷

For these reasons, I respectfully dissent from this order.

Suedeem G. Kelly

⁵ *Baltimore Gas & Electric Co.*, 120 FERC ¶ 61,084 (2007) (*BG&E*).

⁶ PHI June 23, 2008 Response to May 23, 2008 Letter, Response to Question 6 at page 4 of 14.

⁷ *Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc.*, 122 FERC ¶ 61,037 (2008).

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WELLINGHOFF, Commissioner, dissenting:

I dissent from this order because I conclude that PHI has not demonstrated that the Commission should grant the 150 basis point incentive ROE adder that PHI has requested for the eight projects at issue in this proceeding.

In its protest to PHI's request for incentives, the Maryland Commission makes the following noteworthy statement:

[R]eflexively granting the full 150 basis points above the 11.3 percent base ROE (which already includes 50 basis points above the base), for all projects forces Maryland ratepayers to pay extraordinary incentives for ordinary projects. It also encourages the continuing spiraling of incentives to transmission owners for even the most routine investments, and enhances the growing disparity in incentives being granted by FERC that appear to have no real nexus (much less a clear one) to any particular project.¹

I believe that the Maryland Commission's statement usefully highlights a fundamental flaw in both PHI's application and the majority's rationale in this order: an inadequate distinction between non-routine projects that warrant an incentive ROE adder because of the risks and challenges associated with those projects, and routine projects for which the Commission should not grant an incentive ROE adder.

I recognize that the majority claims to distinguish between non-routine and routine projects in evaluating incentive requests. The majority finds that PHI has satisfied the Commission's nexus requirement "by demonstrating that the projects are not routine, based on the projects' scope, effects, challenges or risks, in addition to other factual information ..."² The majority devotes several pages to describing that information. I do

¹ Maryland Commission Protest at 9-10 (emphasis in original).

² 124 FERC ¶ 61,176 at P 63 (2008).

not dispute the accuracy of the information on which the majority relies. Nonetheless, I do not see that information as demonstrating that PHI's projects are non-routine or otherwise worthy of receiving the incentive ROE adder that PHI has requested.

For example, the majority appears to find persuasive PHI's statement that "one of the biggest risks is the ability to construct these lines without causing serious damage to the protected wetlands and threatened and endangered species of plants and animals that are found along the routes of these transmission lines."³ However, accounting for the impact of its projects on protected environments and species merely fulfills PHI's obligations and, therefore, should not be a basis for finding that these projects warrant an incentive ROE adder.

Similarly, I do not dispute the majority's findings that these projects will reduce congestion and improve reliability in the mid-Atlantic region. I am concerned, however, by the majority's reliance on those findings to identify these projects as non-routine, and by the majority's further statement that PHI's requested ROE adder "will promote these goals by recognizing the importance of the new facilities and the risks inherent in bringing them to completion."⁴ It can be argued that virtually any project would reduce congestion and improve reliability. For that reason, the majority's rationale in this order may obscure the distinction between routine and non-routine projects, which the majority has made central to implementation of the nexus requirement.⁵

I am also concerned about other aspects of this order, such as the majority's failure to analyze these PHI projects individually in adequate detail. The majority states that "[a]ll of these projects, individually and combined, address significant short-term

³ *Id.* P 71.

⁴ *Id.* P 63, 66.

⁵ *See, e.g., Baltimore Gas and Electric Co.*, 120 FERC ¶ 61,084 at P 50-55 (2007). I note that this order does make an improvement to the majority's analysis of requests for incentive ROE adders. The majority has previously found that "all baseline projects in the PJM RTEP qualified as non-routine and, thus, satisfied the nexus requirement for an ROE incentive." *See, e.g., Commonwealth Edison Co.*, 122 FERC ¶ 61,037 at P 27 (2008). I have stated that I disagree with a finding that designation as an RTEP baseline project necessarily means that a project satisfies the nexus requirement. *Potomac-Appalachian Transmission Highline, L.L.C.*, 122 FERC ¶ 61,188 (2008) (dissent in part of Commissioner Wellinghoff at 2, n.6). In contrast to the majority's past statements, this order clarifies that rather than being determinative, "[t]hese projects' status as PJM RTEP baseline projects is significant in our analysis because such projects provide benefits to customers in one or more transmission owner zones." 124 FERC ¶ 61,176 at P 69.

reliability issues and represent a substantial capital undertaking.”⁶ The majority also states that the projects at issue here “individually and together, represent a significant financial outlay.”⁷ These statements imply that the majority analyzed how each project individually contributes to the claimed benefits. Such individualized analysis, however, is conspicuously lacking in this order. The failure to analyze these projects individually in adequate detail could inadvertently signal that applicants are likely to benefit from including in a package with more deserving projects incentive ROE adder requests for routine projects that generally do not warrant such treatment.

I believe that an adequately detailed, individualized analysis of PHI’s projects would include greater consideration of advanced technologies than appears in this order. As I have discussed previously, I believe that consideration of advanced technologies and their associated risks and challenges is an appropriate component of the nexus analysis that the Commission conducts in evaluating applications for incentives under Order No. 679.⁸ I have also stated that, to comply with the technology statement requirement of Order No. 679, I expect applicants for incentive ROE adders to provide a thorough and complete evaluation of the feasibility of using state-of-the-art technologies in the projects for which they are seeking incentives.⁹

PHI states that it is committed to “continue to re-evaluate all advanced technologies to assure that [its] transmission systems are robust and economic, while limiting environmental impact.”¹⁰ Despite that commitment, I believe that PHI has failed to provide -- in either its application or its response to a deficiency letter from Commission staff -- enough detail about its proposed use of advanced technologies in these projects to warrant an incentive ROE adder that would reflect risks and challenges

⁶ 124 FERC ¶ 61,176 at P 76.

⁷ *Id.* P 65.

⁸ *See, e.g., Potomac-Appalachian Transmission Highline, L.L.C.*, 122 FERC ¶ 61,188 (2008) (dissent in part of Commissioner Wellinghoff at 1-4); *Northeast Utilities Service Co.*, 124 FERC ¶ 61,044 (2008) (dissent of Commissioner Wellinghoff at 2-3). Such consideration of the technology statement that Order No. 679 requires of all applicants for incentive rate treatment does not conflict with either the statement from Order No. 679, cited in this order, that the Commission will not mandate the use of advanced technologies, or the majority’s statement in this order that advanced transmission technologies are not required for a project to be eligible for transmission investment incentives. 124 FERC ¶ 61,176 at P 72 (citing Order No. 679 at P 310).

⁹ *See, e.g., American Elec. Power Serv. Corp.*, 118 FERC ¶ 61,041 (2007) (concurrence of Commissioner Wellinghoff at 6, citing Order No. 679 at P 302).

¹⁰ Exhibit No. PHI-16 at 1.

associated with those technologies. I strongly encourage future applicants for incentive ROE adders to provide more detailed information on this important issue.

For these reasons, I respectfully dissent.

Jon Wellinghoff
Commissioner